



**COMMONWEALTH of VIRGINIA**  
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*Richmond 23219*

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**MEMORANDUM**

**TO: BRIAN MCCORMICK**  
Regulatory Coordinator  
Virginia Department of Medical Assistance Services

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: August 4, 2008**

**SUBJECT: Final Exempt Regulation to Implement Reimbursement Changes**

I have reviewed the attached final regulation to make reimbursement changes to operating rates for hospitals and nursing services, physician rates, and agency-directed individual supported employment rates. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (“DMAS”) has the legal authority to promulgate the final regulations and if the final regulations comport with state and federal law.

It is this Office’s view that DMAS has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. The Virginia General Assembly through Chapter 879, Item 306 PP, RR, UU, and VV of the 2008 *Acts of Assembly* require reducing operating rates for hospitals by 2.683 percent and nursing facilities by 1.329 percent, recalibrating Resource Based Relative Value System physician rates and realigning rates to pay agency-directed individual supported employment rates the provider specific rates paid by the Department of Rehabilitative Services. Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006.

If you have any questions, please contact me at 786-4074.

Brian McCormick  
August 4, 2008  
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Attachment

cc: Kim F. Piner, Esquire  
Senior Assistant Attorney General